IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1313 of 1981
With
FIRST APPEAL No. 1342 of 1981

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUNICIPAL COPRN OF AHMEDABAD - Appellant(s)
Versus
NATWARLAL & CO - Defendant(s)

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Appearance :
MR MITUL K SHELAT for Appellant(s) : 1,
MS VASUBEN P SHAH for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/08/2006

ORAL JUDGMENT

First Appeal No.1313 of 1981 is filed by the appellant–original defendant Ahmedabad Municipal Corporation (hereinafter referred to as “the

Corporation") challenging the judgment and decree passed by the learned City Civil Court at Ahmedabad dated 12th February, 1981 in Civil Suit No.4295 of 1977 by which the learned trial Court has partly allowed the said suit.

2. So far as First Appeal No.1342 of 1981 is concerned, the same has been filed by the appellant – original defendant Ahmedabad Municipal Corporation (hereinafter referred to as "the Corporation") challenging the judgment and decree passed by the learned City Civil Court at Ahmedabad dated 12th February, 1981 in Civil Suit No.4294 of 1977 in partly allowing the said suit. By impugned judgment and decree, the learned trial Court in both the aforesaid suits declaring that the suit goods imported by the respective plaintiff firms are not sanitary fittings and the octroi duty cannot be levied and recovered on the same under item No.28(a) of Schedule A of the Octroi Rules and Standing Order framed by the defendant Corporation under the Bombay Provincial Municipal Corporations Act, 1949 (for short "the Act"). The learned trial Court also declared that the suit goods would be covered under item No.55 of the said Schedule A of the Octroi Rules and Standing Orders framed by the defendant Corporation under the Act. The defendant

Corporation was ordered to refund and pay an amount of Rs.11,077.58 paid by the plaintiff in excess of the Octroi duty payable by the plaintiff to defendant Corporation and which was illegally levied and recovered by the defendant under item No.28(a). Rest of the prayer of the plaintiff to grant perpetual permanent injunction restraining the Corporation from levying any Octroi duty on the goods in question, in future, came to be dismissed by the learned trial Court.

3. As common question of law and facts arise in both these appeals, they are being disposed of by this common judgment.

4. The dispute whether the goods imported by the respective plaintiff and brought within the local limits of the Corporation was chargeable to octroi duty under item No.28(a) or item No. 41(a) or under item No.55. The respective plaintiff purchased and brought unmachined and unfinished castings of single piece ball valves consists nipple and flange. As octroi duty was charged under heading item No.28(a) and an amount of Rs.11,540.91 and 5999.00 came to be recovered by way of octroi by charging it under item No.28(a), the respective plaintiffs filed

the aforesaid suits for a declaration that the goods imported by them are not sanitary fittings and the octroi duty leviable on the goods imported by them does not fall under item No.28(a) of Schedule A of the octroi Rules framed under the Act and for a permanent injunction restraining the defendant Corporation from levying octroi duty as provided under the said item No.28(a) of Schedule A of the octroi Rules. It was the contention on behalf of the plaintiffs that they are dealing in different types of valves and Taper plug valves and these valves are manufactured from unmachined and unfinished castings of different parts, such as body, bonnet, gland, disc and holder. It was further averred that Globe valve is manufactured from body, bonnet and gland and the ball valves are of three different types (1) Single piece ball valves (2) Two piece ball valves and (3) Three piece ball valves. It was averred that the unmachined and unfinished castings of single piece ball valves consists nipple and flange. From the unmachined and unfinished castings, three piece ball valves are manufactured consisting body and distant piece. It was also averred that the valves are having different size and it was averred that they purchased the unfinished and unmachined castings of the aforesaid valves from different factories situated

outside Ahmedabad. It was further averred that all these unmachined and unfinished castings, when purchased, are unfinished and unmachined castings and for that purpose, they have to pass different components of the particular valves through different processes, such as machining, finishing and polishing etc. It was further averred that after casting of different components are passed through the different processes, then the same are assembled together and they become valves. It was thus averred that, they were not purchasing the valves but they were simply purchasing unmachined and unfinished castings in different shapes and the same were imported by them in Ahmedabad from outside firms or companies. According to them, the action of the Corporation in levying octroi duty considering it as sanitary fittings under item No.28(a) was absolutely illegal and therefore, it was requested to allow the aforesaid suit. The suit was resisted by the Corporation by filing written statement at Exh-8. According to them, in a separate state, the component parts will be merely fittings of a valve and such fittings will be covered under item No.28(a) of the octroi Rules. Alternatively, it was also averred that if the same will not fall under item No. 28(a), then certainly they will fall under item No. 41(a). After

considering oral as well as documentary evidence, the learned trial Court held that the goods imported by the respective plaintiffs from out of the city of Ahmedabad and into the limit of Corporation cannot be said to be sanitary fittings and therefore, the same would not fall under item No.28(a). The learned trial Court also held that the said goods would also not fall under item No. 41(a). However, considering item No.55, which is a residuary clause, the learned trial Court applied the same and directed that the goods, brought within the Corporation by the respective plaintiff, would be liable to octroi duty under item No.55 and accordingly partly allowed the said suit and directed the Corporation to refund the amount accordingly. Being aggrieved by the aforesaid judgment and decree passed by the learned City Civil Court at Ahmedabad, the appellants herein – Ahmedabad Municipal Corporation have preferred the present first appeals.

5. Item Nos. 28, 41(a) and 55, which are relevant for the purpose of determination of the present first appeals read as under:

28(a) “Sanitary fittings including C.I. Pipes,

lead Pipes, cement pipes, earthenware pipes, stone ware pipes, gunmetal valves, gunmetal and brass cocks and their fittings.”

41(a) “ All kinds of machinery, their components and spare-parts specified elsewhere in the schedule, machine tools, teleprinters, typewriters, duplicators their components and spare-parts.”

55 “All articles and goods not specified elsewhere i the schedule or in the list of exempted articles and goods except fresh fish.”

It is an admitted position and even according to the plaintiffs, they had imported and brought in the local limits of the Ahmedabad Corporation and purchased the unfinished and unmachined castings from different factories for the purpose of manufacturing valves. Under the circumstances, though strictly it cannot be said that the said goods, which were imported by the respective petitioners were sanitary fittings but certainly the same can be said to be the components for the purpose of preparing machinery etc. considering the definition, more particularly, item No. 41(a), the learned trial Court has

materially erred in holding that the goods in question will not be chargeable to octroi under item No.41(a). Admittedly, when unmachined and unfinished castings of the aforesaid valves are brought and when according to the plaintiffs, they have to undergo further process for the purpose of preparing/manufacturing a particular valve then certainly the same can be said to be the components of the valves. Under the circumstances, the learned trial Court has committed an error in not treating the goods under item No.41(a) and Schedule A to the octroi Rules. If the goods are to be treated under item No.41(a), certainly item No.55 was required to be considered as the same is a residuary clause. On the facts of the case and considering the goods imported by the respective plaintiffs, the octroi would be chargeable under item No.41(a) and to that extent, the judgment and decree passed by the learned trial Court is required to be quashed and set aside.

6. It appears from the record that the cross objections are also filed by the respective original plaintiffs contending inter alia that the learned trial Court ought to have granted permanent injunction restraining the Corporation from charging octroi duty under item No.

28(a). However, in view of the aforesaid finding that the octroi duty would be chargeable under item No.41(a), the cross objection will not survive and/or is required to be dismissed.

7. For the reasons as stated above, both the appeals succeed in part. The judgment and decree passed by the learned trial Court are hereby modified and it is declared and ordered that on the goods in question, the octroi duty would be chargeable under item No.41(a) of Schedule A to the octroi Rules and not under item No.55 as directed by the learned trial Court. Both the appeals allowed to the aforesaid extent and cross objections are dismissed. No costs.

(M.R.SHAH,J.)

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